

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0040
Withholding Tax
Responsible Officer
For the Tax Period 1998**

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ISSUE

1. Withholding Tax-Responsible Officer Liability

Authority: IC 6-3-4-8(f), IC 6-8.1-5-1(b).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

STATEMENT OF FACTS

The taxpayer was a shareholder in a corporation that did not properly remit withholding taxes to the state during the tax period 1998. The Indiana Department of Revenue, hereinafter referred to as the "department," assessed the unpaid withholding taxes, interest, and penalty against the taxpayer. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

1. Withholding Tax-Responsible Officer Liability

Discussion

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

The taxpayer admits that he was one of three persons responsible for the remittance of the subject withholding taxes to the state. The taxpayer contends, however, that he fulfilled

his responsibility by giving another of the responsible parties a check for one third of the taxes due. That party failed to satisfy the liability with the state.

The statute clearly states that every responsible person is responsible for the payment of the entire amount of the tax due to the state. There is no statutory exemption granted for persons who gave another person money that was never remitted to the state.

Finding

The taxpayer's protest is denied.